

[31] The Johnson & Johnson Korea case of resale price maintenance and trading under unfairly binding terms and conditions (resolved on Dec. 24, 2013)

—<Brief summary>—

Finding that the Johnson & Johnson Korea (hereinafter, “Johnson & Johnson”) fixed the minimum selling prices of the Acuvue contact lenses supplied to optical stores and had forced them not to sell the contact lenses at any price lower than the fixed prices, the KFTC issued an order to take corrective measures and imposed a fine of 1 billion 806 million won upon the company.

A. Facts of violation

(1) Resale price maintenance

Johnson & Johnson used to notify optical dealers of its fixed consumer prices whenever it released new products to the market since 1998 when it introduced Acuvue contact lenses to Korean market. Since January 2007, the company has made a discount dealership agreement with each optical dealer, under which the company agreed to discount 10% of the amount of transaction on condition that the dealer should comply with the fixed prices but the discount should be revoked or the agreement should be terminated, if a dealer sold a lens at any price lower than the fixed prices.

Thereafter, Johnson & Johnson has surveyed market prices in order to check whether optical dealers have complied with its fixed prices and have taken unfavorable countermeasures against optical dealers whose breach of the fixed prices were revealed through the surveys conducted on market prices from January 2007 until April 2, 2010, such as the suspension of supply of products for two weeks minimum up to one month maximum.

(2) Trading under unfairly binding terms and conditions

Johnson & Johnson has made a discount dealership agreement on the supply of products, under which it should give a discount of 10% of the amount of transaction on condition that a dealer should not distribute any product to any non-dealer optical store and the company should cancel the agreement and revoke the discount if any product was transferred to a non-dealer.

Thereafter, Johnson & Johnson have taken unfavorable countermeasures against optical dealers whose distribution of products were revealed through the surveys conducted on market prices from January 16, 2007 until April 2, 2010, such as the suspension of supply of products for two weeks minimum up to one month maximum.

Such measures taken by Johnson & Johnson were aimed at placing restrictions on the scope of dealers and raising the effectiveness of resale price maintenance, because it was concerned that the consumer sale prices controlled by it could not be maintained, if an optical dealer was allowed to resell a product that the dealer purchased from the company at a lower price through a discount event to another optical dealer.

B. Countermeasures taken

The KFTC issued an order to take corrective measures and imposed a fine of 1 billion 806 million won against the company, applying Articles 29 (1) (Maintenance of Resale Prices) and 23 (1) 5 (Trading under Unfairly Binding Terms and Conditions) of the MRFTA.